



MEMORANDUM

DATE: June 6, 2018
For June 21, 2018 Hearing

TO: Zoning Examiner

FROM: Scott Clark
Planning & Development Services
Interim Director

SUBJECT: SPECIAL EXCEPTION LAND USE
PLANNING & AND DEVELOPMENT SERVICES REPORT
Mayor and Council Special Exception Procedure
SE-18-33 Verizon – 9th Street, C-1 (Ward 6)

Issue – This is a request by Declan Murphy of Coal Creek Consulting on behalf of APC Towers and Verizon Wireless, for approval of a wireless communication facility (WCF). The special exception site is located approximately 120 feet south of 9th Street and 100 feet east of Park Avenue (see Case Location Map). The preliminary development plan (PDP) proposes a wireless communication tower disguised as a palm tree (monopalm), 60 feet in height, with twelve antennas. The WCF will be placed within an 800 square foot (40 feet by 20 feet) lease area on a 1.61-acre parcel owned by Tucson Unified School District (TUSD). The facility will be placed adjacent to a parking lot used by TUSD, and approximately 40 feet to the east of a commercial building which is located on an adjacent parcel and is currently a nightclub (alcoholic beverage service and entertainment use).

A communications use of this type in the C-1 zone is subject to Sections 4.9.13.O and 4.9.4.I.2, .3, and .7 of the *Unified Development Code (UDC)* and requires approval through a Mayor & Council Special Exception Procedure, Sec. 3.4.4, because the tower exceeds 50 feet in overall height, and because the tower does not meet a 2 to 1 setback from R-2 (residential) zoned property located approximately 20 feet to the east of the proposed monopalm site. Documentation provided by the applicant indicates that no practical alternative exists, and measures are being taken to conceal or disguise the tower and antenna from view by using a stealth monopalm design.

The Mayor & Council Special Exception Procedure requires a public hearing before the Zoning Examiner after which the Zoning Examiner forwards a recommendation to the Mayor and Council for a decision to grant the request with, or without, conditions or to deny the request. The Mayor and Council may also forward the request to the Design Review Board (DRB) for design review and recommendation.

Planning & Development Services Department Recommendation – The Planning & Development Services Department recommends approval of the special exception request, subject to the attached preliminary conditions.

Background Information

Existing Land Use: Parking area for TUSD.

Zoning Description:

C-1: This zone provides for low-intensity, commercial and other uses that are compatible with adjacent residential uses. Residential and other related uses are permitted.

Surrounding Zones and Land Uses:

North: Zoned R-3 and C-1; Residential (apartments and single-family homes) across 9th Street

South: Zoned C-2; TUSD parking lot, TUSD offices beyond across 10th Street

East: Zoned R-2; TUSD parking lot, single-family homes beyond across Fremont Avenue

West: Zoned C-1; Commercial nightclub (alcoholic beverage service/entertainment use)

Previous Cases on the Property: None

Related Cases:

SE-15-14 Verizon - Grant Road, C-1 Zone – This was a request for approval of a wireless communication facility concealed within an artificial palm tree, 60 feet in height and associated equipment as a special exception land use. The site is located 95 feet north of Grant Road and 67 feet west of Columbus Boulevard. On July 7, 2015, the Mayor and Council adopted Ordinance No. 11288, allowing the special exception.

SE-13-22 AT&T– Fort Lowell Road, C-1 Zone – This was a request for approval of a wireless communication facility concealed within an artificial palm tree, 65 feet in height and associated equipment as a special exception land use. The site is located 180 feet south of Fort Lowell Road and 610 feet west of Campbell Avenue. On July 9, 2013, the Mayor and Council adopted Ordinance No. 11092, allowing the special exception.

Applicant's Request – The applicant requests special exception approval for the placement of a 60-foot high wireless communications facility disguised as a palm tree (monopalm) with associated ground equipment on a C-1 zoned parcel adjacent to a parking lot owned by TUSD.

Planning Considerations – Land use policy direction for this area is provided by the *University Area Plan (UAP)* and *Plan Tucson (PT)*. Policies in the *UAP* support development on the perimeter of residential areas that will protect and enhance the quality of life for area residents. The policies support site design that demonstrates sensitivity to the surrounding uses.

Plan Tucson identifies this area in the Future Growth Scenario Map as an existing neighborhood and supports new services and amenities that contribute further to neighborhood stability. Existing neighborhoods are primarily developed and largely built-out residential neighborhoods and commercial districts in which minimal new development and redevelopment is expected in the next several decades. The goal is to maintain the character of these neighborhoods, while accommodating some new development and redevelopment and encouraging reinvestment and new services and amenities that contribute further to neighborhood stability. *PT* requires that telecommunications facilities be located, installed, and maintained to minimize visual impact and preserve views. Cabling and fiber optics should be installed underground where possible, and the visual impact of cellular towers should be a prime consideration in the city's acceptance and approval. *PT* also provides policy direction to improve the appearance of above-ground utilities and structures, and extend access to high-tech wireless communications facilities throughout the city.

The proposal is in general compliance with *UAP* and *PT*, and does not require a plan amendment. Plan policies generally support new cell tower proposals when designed to minimize visual impacts on surrounding neighborhoods and when buffering is provided.

The Pima Association of Governments - Transportation Planning Division (PAG-TPD) estimates that the proposed development will not generate additional measurable vehicle trips per day. Field inspection by staff indicates there are currently no billboards on the special exception site.

Design Considerations

Land Use Compatibility – The proposed monopalm will include three antennas per sector with three sectors for a total of twelve antennas. The applicant has submitted a photo-simulation of the monopalm showing the antennas disguised and concealed by the artificial branches. The applicant has also provided radio frequency maps showing the gap in wireless communication coverage in the area and how this gap will be resolved by the proposed facility.

The nearest residential developments are an apartment complex, zoned R-3 and a single-family home, zoned C-1, both located approximately 190 feet to the north across 9th Street, and single-family homes, zoned C-2, located approximately 200 feet to the southwest across Park Avenue. The WCF will be set back from Park Avenue by approximately 100 feet and from 9th Street by approximately 120 feet. The monopalm will be visible from the surrounding residential neighborhoods, commercial developments, and from nearby streets.

The ground lease area is 800 square feet (20 feet by 40 feet) with ground level equipment that will be screened from view by an 8-foot high masonry wall. The proposal does not include a backup generator. Staff recommends that any graffiti be removed within 72 hours of observation.

The facility will be placed adjacent to a large parking lot for TUSD offices, which are located to the south of the special exception site and across 10th Street.

In terms of wireless communication facilities, a stealth application is one that disguises the appearance of the pole and antennas to look like an element of the built or natural landscape, which could typically occur at the chosen location. A stealth application should be as close as possible in scale and appearance to the object it is disguised as, with no obvious unnatural elements. The success of a stealth application is dependent on the ability of the design and construction of the cellular site to fit into its surroundings to such a degree that it is not noticeable. Scale and proportion, site design, color, and materials, are particularly important in stealth applications insofar as they contribute, or do not contribute, to the ability of the facility to be as unobtrusive as possible. To ensure a successful stealth monopalm at this location, the following standards should be incorporated into the conditions:

- The monopalm shall not exceed 60 feet in height at top of fronds;
- The pole shall be covered with cladding (bark) where visible, and painted to resemble a live palm tree;
- Replacement of lost/damaged palm fronds to be completed within ten working days of observation;
- All cables shall be run inside the pole, with no foot pegs or other visible appurtenances;
- All wires, wire ports and equipment shall be concealed behind the artificial palm fronds;
- Antenna panels shall be colored or provided with a sock in a light/shade pattern to better camouflage them;
- Ground equipment to be screened by a masonry wall.
- Any future collocated antennas shall be camouflaged and concealed by artificial fronds.

Road Improvements/Vehicular Access/Circulation – No road improvements are proposed with the project. Primary vehicular access to the WCF will be through the existing curb cut and on-site parking area access lanes, and is identified by a 12-foot wide access easement from 9th Street. According to the *Major Streets and Routes Plan*, all surrounding adjacent streets (9th Street, Park Avenue, 10th Street, and Fremont Avenue) are local streets.

Federal Regulations – Because this Special Exception application involves a wireless communication request, the Zoning Examiner's consideration of the application is impacted by the application of federal laws specific to wireless communications. While federal law does not entirely preempt local decision-making authority based on legitimate zoning requirements, such as community aesthetics and compliance with stealthing requirements, it does impose the following limitations:

- 1) The decision on the application must occur within the “shot clock” period as provided under federal law, which for this type of application is 150 days. In this case, the application was accepted on May 9, 2018 and the “shot clock” period will expire on October 6, 2018. If a decision is not rendered within the “shot clock” period, the review

and consideration process is presumed to be unreasonable and affords the applicant the opportunity to file a lawsuit. If sued, the City would need to prove that it acted “reasonably” when it failed to act within the established “shot clock” period.

- 2) The evaluation of the request cannot include consideration of potential environmental or health effects of radio-frequency (RF) emissions where, as here, the facility will comply with FCC regulations and standard on such emissions.
- 3) The decision on the application cannot unreasonably discriminate among providers of functionally equivalent services. A denial may be deemed to be “unreasonable discrimination” if the applicant is similarly situated to other prior applicants and the proposed facility is no more intrusive than other prior applications that have been approved.
- 4) The decision may not have the effect of prohibiting the provision of wireless services, or of causing a significant gap in the applying provider’s coverage. In this context, the relevant issues are: (1) whether the applicant has shown a significant gap in service coverage; and (2) whether the proposal to fill this gap is the least intrusive means of doing so, or whether there are alternative sites that would fill the gap.
- 5) In the event of a denial, that decision and its reasons must be delivered to the applicant in writing, and must be supported by substantial evidence.

Given these constraints, the Zoning Examiner’s recommendation on this application should focus on whether the applicant has demonstrated a significant coverage gap; whether that gap could be addressed through an installation at an alternative site; and whether the proposed concealment/stealth measures are sufficient to meet the City’s requirements. The Zoning Examiner should also consider how this application compares to other prior applications for similar facilities. In the event of a recommendation for denial, the reasons must be stated so they can be incorporated into a written decision and captured in the meeting minutes.

Use-Specific Standards – The applicant’s proposal requires approval as a Mayor and Council Special Exception and must meet the Use-Specific Standards of *UDC* Sections 4.9.13.O and 4.9.4.I.2, .3, and .7. The Mayor and Council may forward the request to the Design Review Board for design review and recommendation. Below is an analysis of the performance criteria.

4.9.4.I.7

The following requires approval as a special exception in accordance with Section 3.4.4, *Mayor and Council Special Exception Procedure*. The Mayor and Council may forward to the Design Review Board (DRB) for design review and recommendation.

- a. Wireless communication antennas, provided:

- (1) The tower or antennas are not permitted by other provisions of this section.

The 60-foot monopalm in the C-1 zone does not conform to other sections of the code because it exceeds 50 feet in height and does not meet 2:1 setback from adjacent R-2 residentially zoned property.

- (2) New towers require a minimum separation of one mile from any existing tower, regardless of ownership, unless documentation establishes that no practical alternative exists.

The nearest existing wireless communications facilities (WCF's) are approximately 2,600 feet to the north of the proposed site on University of Arizona Property, and 2,800 feet to the west on TUSD (Tucson High School) property. These facilities are not suitable to fit within the existing sites on Verizon's network. The search ring to resolve the coverage gap has a radius of approximately 0.25 miles.

- (3) All appropriate measures shall be taken to conceal or disguise the tower and antenna from external view.

The tower will be disguised as a palm tree.

- (4) All appropriate measures shall be taken to reduce the negative proliferation of visible towers and antennae by the collocation of new antennae on existing towers or with the facilities of other providers which are located or planned for development within the proposed service area.

The nearest existing WCF is approximately 2,600 feet to the north. The search ring to resolve the coverage gap has a radius of approximately 0.25 miles.

- (5) Notice shall be provided to all agents designated at least 15 days prior to the date of the public hearing before the Zoning Examiner.

All policies of the Mayor and Council Special Exception Process shall be followed accordingly.

Staff finds the proposal to be in compliance with the UDC Use-Specific Standards.

Conclusion – The proposal is in compliance with the performance criteria for a wireless communication facility. The special exception request is consistent with policy direction in the *University Area Plan* and *Plan Tucson*, which support development designed to be compatible with and sensitive to surrounding land uses. The proposed WCF has been designed to blend in with the surroundings and does not conflict with plan policies. Staff acknowledges that the

proposed WCF will help improve telecom services to the established neighborhoods and businesses in the area. Subject to compliance with the attached preliminary conditions, approval of the requested special exception is appropriate.

PROCEDURAL

1. A site plan in substantial compliance with the preliminary development plan dated April 10, 2018, is to be submitted and approved in accordance with *Administrative Manual*, Section 2-06.
2. The property owner shall execute a waiver of potential claims under A.R.S. Sec. 12-1134 for this zoning amendment as permitted by A.R.S. Sec. 12-1134 (I) in the form approved by the City Attorney and titled "Agreement to Waive Any Claims Against the City for Special Exception Land Use".
3. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Archaeologist. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director of Arizona State Museum.
4. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
5. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of the special exception land use.
6. A copy of the Special Exception decision letter shall be included with the site plan at the time of permit application submittal.

LAND USE COMPATABILITY / CONCEALMENT MEASURES

7. The wireless communication monopalm, including attachments such as antenna panels and artificial palm fronds, shall not exceed sixty (60) feet in height from grade elevation.
8. The antennas shall be covered in camouflaged socks to blend with the colors of the artificial palm fronds of the monopalm.
9. The pole shall be covered with cladding (faux bark) wherever the pole is visible, and be painted to resemble a live palm tree.
10. Replacement of lost/damaged artificial palm fronds is to be completed within ten (10) working days of observation and artificial fronds shall be colored to match live fronds as closely as possible.
11. Verizon shall routinely monitor the facility and repair/replace any artificial branches that may become worn or damaged through time.

12. All wire ports shall be concealed behind the antennas and all equipment shall be mounted behind the antenna panels.
13. Ground equipment to be located within lease area as depicted on the preliminary development plan dated April 10, 2018.
14. Six-(6) inch wide fence block or greater shall be used for perimeter walls. Graffiti shall be removed from walls within seventy-two (72) hours of discovery or notification.
15. There shall be no exterior wiring, visible footpegs, portals, cabling or cable shrouds, or other unnatural appearing features on the monopalm.
16. A minimum of three (3) live palm trees 24-inch box (to grow to 40 feet or more in height), in close proximity to the wireless communication facility. These trees shall be maintained as part of the overall site landscape. If trees become damaged, diseased or die, then trees are to be replaced within 30 days of observation, and replacement will be the responsibility of the wireless communication company.
17. Plans for future carriers must be approved through the special exception process.

AGREEMENT TO WAIVE ANY CLAIMS
AGAINST THE CITY FOR ZONING AMENDMENT

This agreement ("**Agreement**") is entered into between _____, as the owner of the property described herein ("**Owner**") and the City of Tucson ("**City**") to waive any and all claims for diminution of value that may be based upon action by the City in response to a request from the Owner. This Agreement is entered into in conformance with A.R.S. §12-1134(I).

The Owner is the holder of fee title to the property located at _____, Tucson, Arizona, (the "Property") which is more fully described in the Owner's application to the City in Case SE-18-33 and incorporated herein. The Owner, or the authorized agent of the Owner, has submitted an application to the City requesting that the City grant a Special Exception Land Use for the Property. The Owner has requested this action because the Owner has plans for the development of the Property that require the Special Exception Land Use. The Owner believes that the Special Exception Land Use for the Property will increase the value and development potential of the Property, and that this outweighs any rights or remedies that may be obtained under A.R.S. §12-1134 et. seq.

By signing this Agreement, the Owner waives any right or claim that may arise under A.R.S. §12-1134, including any claim for the reduction in the value of the Property, as a result of the enactment of the Special Exception Land Use in Case SE-18-33.

The Owner understands that City staff may propose, the Zoning Examiner may recommend and the Mayor and Council may adopt conditions to the requested Special Exception Land Use that limit the potential development of the Property. The Owner acknowledges that the Special Exception Land Use and conditions are a single, integrated legislative approval. The Owner agrees and consents to all conditions that may be imposed. The Owner retains the right to withdraw the Special Exception Land Use application prior to a vote by the Mayor and Council or to decline to implement the necessary requirements to effectuate the Special Exception Land Use if the Owner disagrees with any conditions that are proposed or approved. If the Owner does not withdraw the application, the Owner shall be deemed to have accepted all adopted conditions to the requested Special Exception Land Use. If the Owner withdraws the application or does not effectuate the Special Exception Land Use, this Agreement is null and void.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. The Owner has agreed to the form of this Agreement provided and approved by the City Attorney. The Owner has had the opportunity to consult with an attorney of the Owner's choice prior to entering this Agreement and enters it fully understanding that the Owner is waiving the rights and remedies as set forth herein.

Upon execution, this Agreement shall be recorded in the Office of the Pima County Recorder.

The Owner warrants and represents that the person or persons listed herein as the Owner is/are the owner in fee title of the Property. The Owner further agrees to indemnify and hold the City of Tucson, its officers, employees and agents harmless from any and all claims, causes of action, demands, losses, costs and expenses based upon an alleged reduction of value of the Property as a result of the City's action in Case SE-18-33.

Dated this _____ day of _____, 20____.

Owner: _____

(Name of Individual, Corporation, Partnership, or LLC, as applicable)

Owner: _____

(Name of Individual, Corporation, Partnership, or LLC, as applicable)

By: _____

(Signature of Owner or Authorized Representative, if applicable)

By: _____

(Signature of Owner or Authorized Representative, if applicable)

Its: _____

(Title of Individual Signing in Representative Capacity)

Its: _____

(Title of Individual Signing in Representative Capacity)

State of Arizona)

County of _____)

On this _____ day of _____, 20____, before me personally appeared _____ on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

Notary Public

My Commission expires:

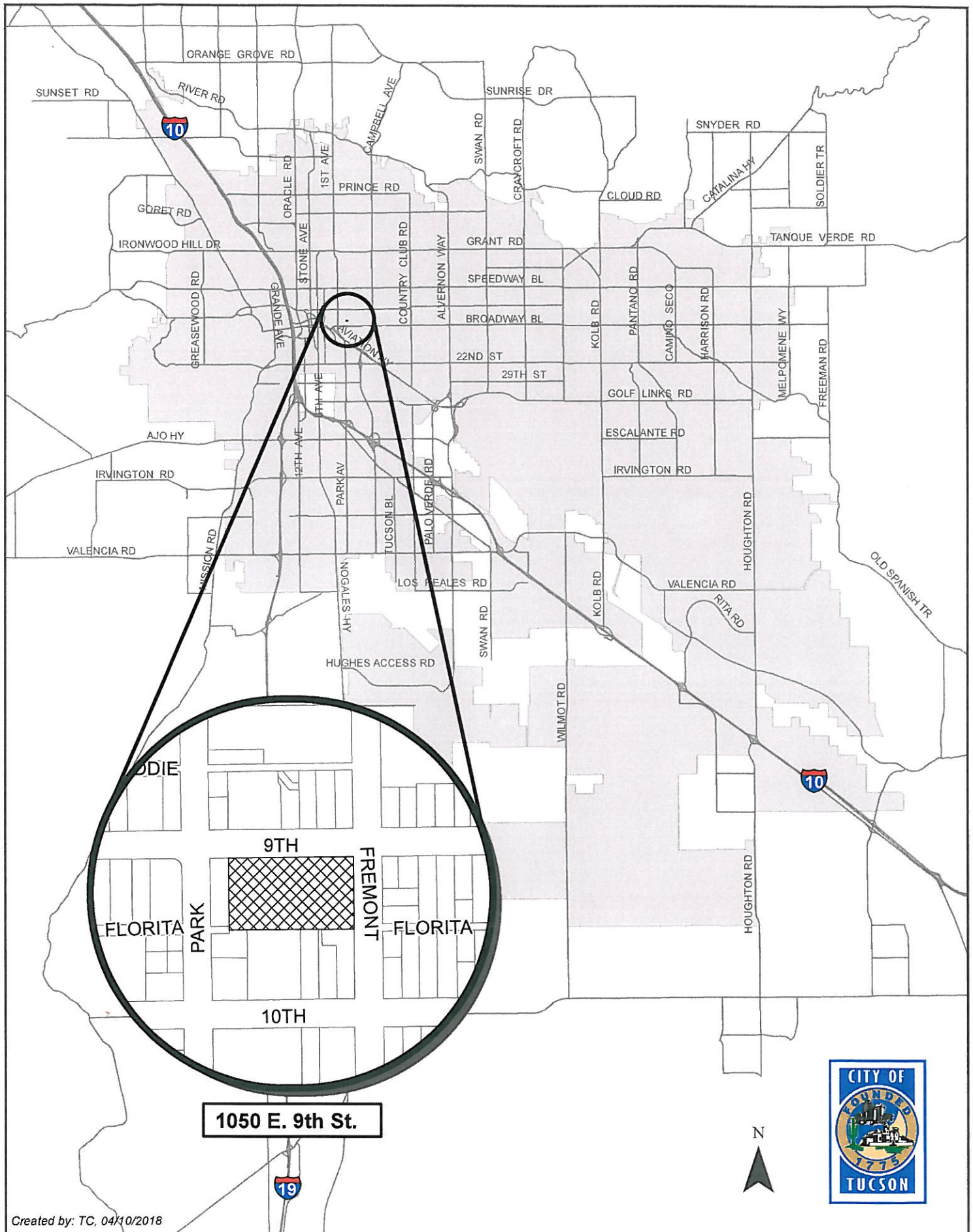
City of Tucson, an Arizona municipal Corporation:

By: _____

Planning & Development Services Department

This form has been approved by the City Attorney.

SE-18-33
Verizon - 9th Street



SE-18-33
Verizon - 9th Street



Area of Special Exception Request



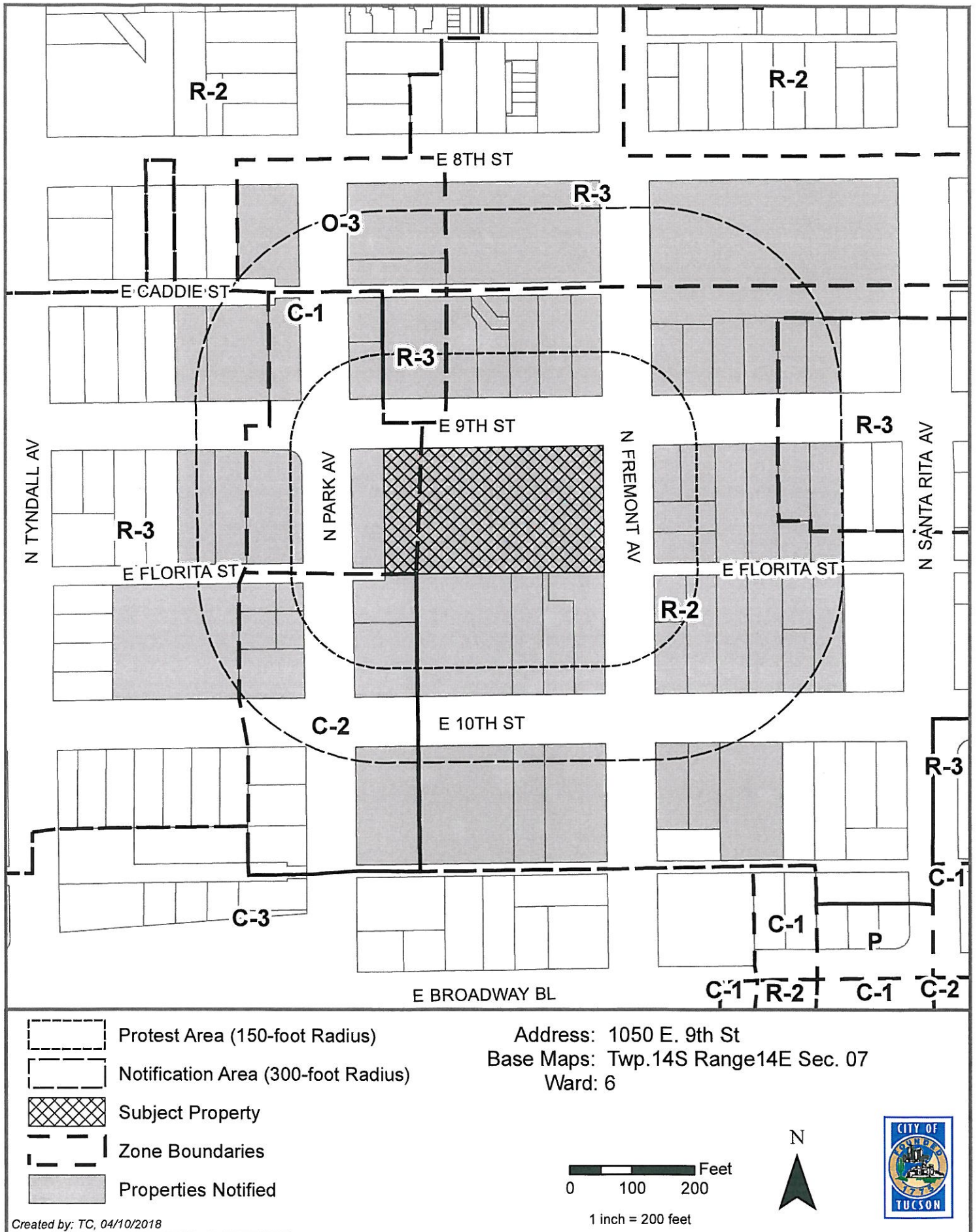
Address: 1050 E. 9th St
Base Maps: Twp.14S Range14E Sec. 07
Ward: 6

0 100 200 Feet

1 inch = 200 feet



SE-18-33
Verizon - 9th Street



PREPARED FOR



3000 ARBOLENT PARKWAY
SUITE 110, WOODBRIDGE, CA 92090
TEL: 949.441.1100

CONSULTANT



27925 CANTERBURY STREET
SUITE 100, TUCSON, AZ 85710
PHONE: 520.546.0000 FAX: 520.796.1211

**Special Exception
Preliminary Development Plan**
S.E. 18-33 Date 4/10/18
Planning & Development Services

TOWER SETBACK TABLE	
NORTH PROPERTY LINE	112.0'
SOUTH PROPERTY LINE	112.0'
WEST PROPERTY LINE	44.0'
EAST PROPERTY LINE	112.0'
BROADWAY RD	210.0'

AZ-1353
TUC CHERRY

1000 E 10TH STREET
TUCSON, ARIZONA 85710
TULSA COUNTY

SHEET TITLE

SITE PLAN

SHEET NUMBER

A-1

24" X 36" SCALE 1" = 30'-0"
11" X 17" SCALE 1" = 60'-0"

SITE PLAN

1

ZONING R-2

ZONING R-2

ZONING R-2

ZONING C-1

9TH STREET

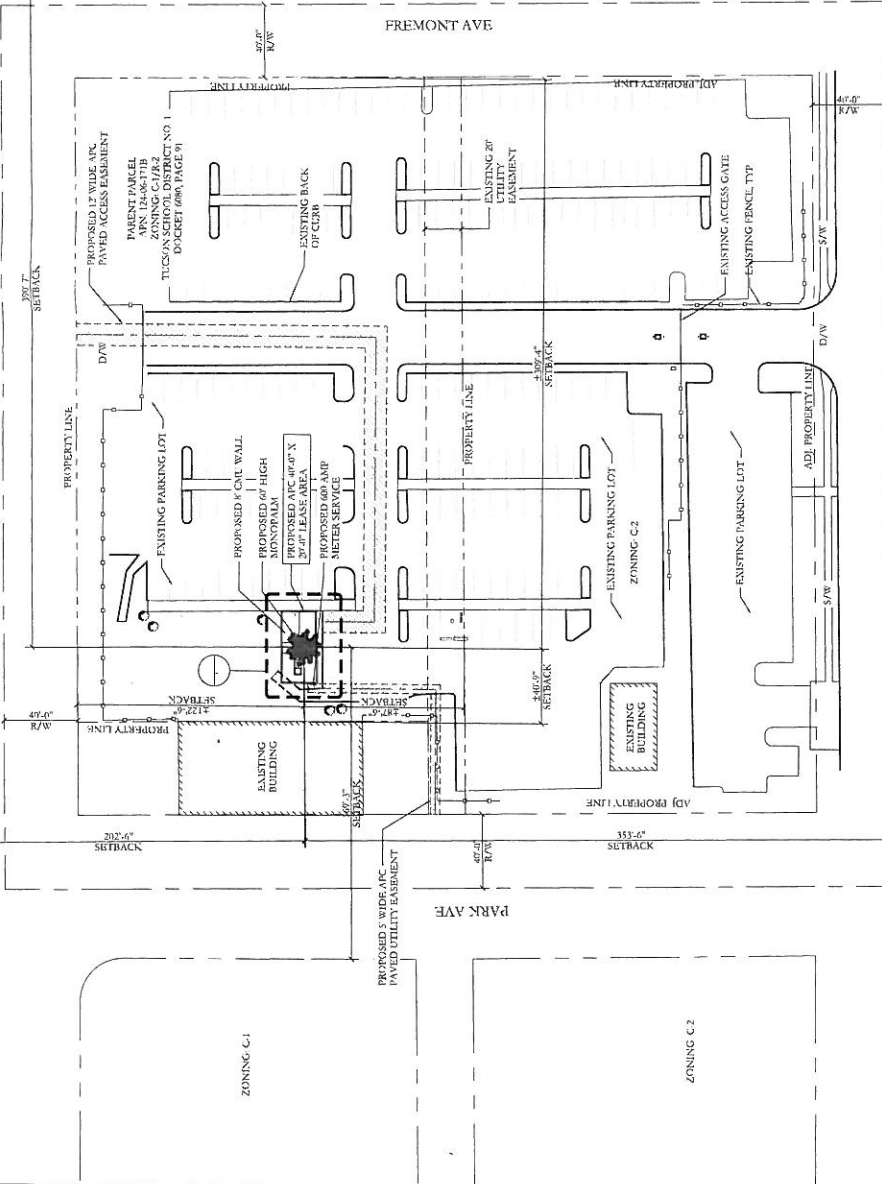
10TH STREET

FREMONT AVE

PARK AVE

ZONING C-1

ZONING C-2



PREPARED FOR:

APC Towers

1000 WEST HENDERSON AVENUE
SUITE 100
TAMPA, FL 33606

CONSULTING FIRM

ANGLE URCE

2000 SOUTH HAVENWAY
SUITE 100
QUINCY, ILL. 62417
PHONE: 618/997-7777 FAX: 618/997-7777

NO.	DATE	DESCRIPTION
1	01/11/18	FOR SUBMITTAL
2	02/14/18	FOR REVIEW
3	03/14/18	FOR REVIEW
4	04/11/18	FOR REVIEW
5	05/11/18	FOR REVIEW
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7	07/11/18	FOR REVIEW
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98	02/11/26	FOR REVIEW
99	03/11/26	FOR REVIEW
100	04/11/26	FOR REVIEW

AZ-1353
TUC CHERRY

1001 4TH STREET
TUCSON, AZ 85701

SHEET TITLE

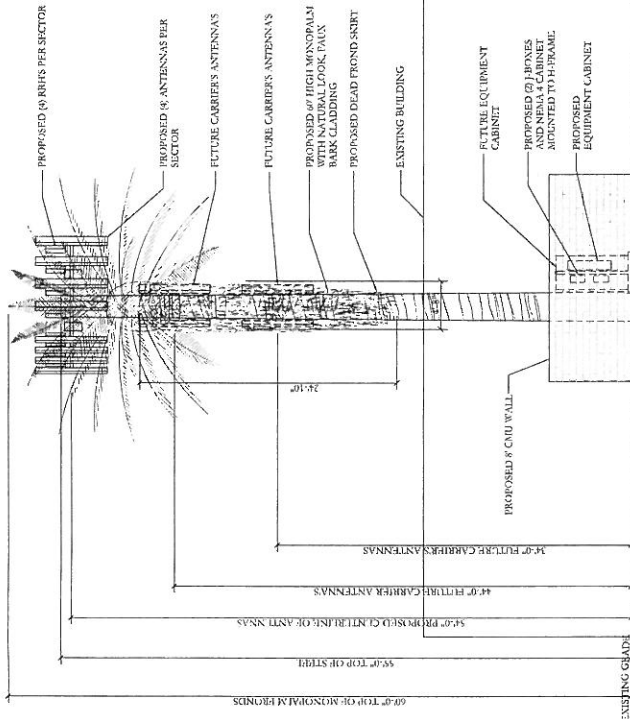
ELEVATIONS

SHEET NUMBER

A-3

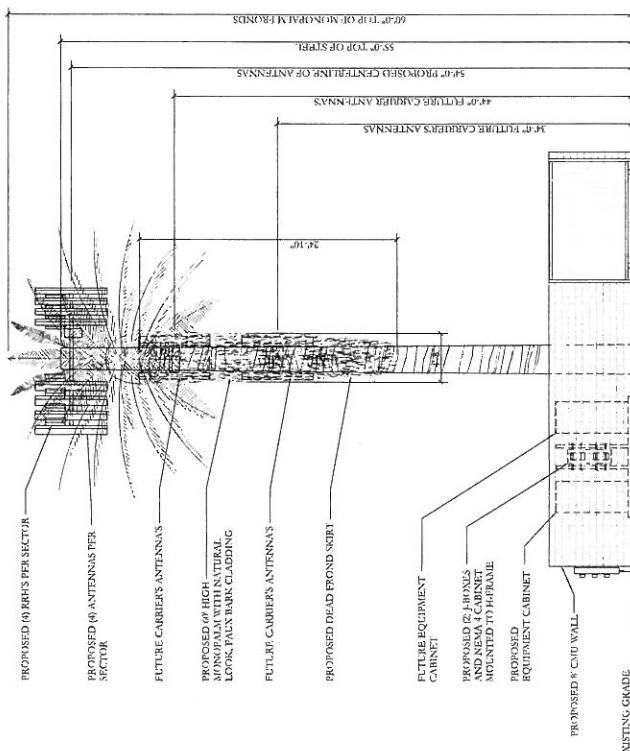
NOTE:
MONOPALM WILL HAVE A MINIMUM OF 9
PALM FRONDS WITH VARYING LENGTH TO
CONCEAL ANTENNAS AND EQUIPMENT
CABINETS. FRONDS WILL BE TRIMMED TO
MATCH FRONDS.

Special Exception
Preliminary Development Plan
S.E. - 18-33 Date 4/10/18
Planning & Development Services



24'-0" SCALE: 1/8" = 1'-0"
11'-0" SCALE: 1/8" = 1'-0"

2 EAST ELEVATION



24'-0" SCALE: 1/8" = 1'-0"
11'-0" SCALE: 1/8" = 1'-0"

2 SOUTH ELEVATION



Approval – Protest Form

If you wish to submit a written protest or approval, this form is provided for your convenience. Please print your comments below, sign your name, and mail to the Rezoning Section of the Planning & Development Services Department at the address on the reverse side (you will need to attach postage). The number of approvals and protests along with protest calculations will be reported at the Zoning Examiner's public hearing.

Approvals and protests must have an owner's signature to be recorded.

Case **SE-18-33 Verizon – 9th Street Ward # 6**

C-1 Zone (A 60-foot tall wireless communication tower, concealed within an artificial palm tree (monopalm), with twelve antennas. The WCF will be placed within an 800 square foot (40 feet by 20 feet) lease area on a 1.61-acre parcel owned by Tucson Unified School District (TUSD).

I/We the undersigned property owners, wish to

- ☐ APPROVE the proposed rezoning.
☐ PROTEST the proposed rezoning.

Reason:

PLEASE PRINT YOUR NAME	PLEASE PRINT MAILING ADDRESS	PLEASE PRINT LEGAL PROPERTY DESCRIPTION		
		Subdivision	Block	Lot

Owner's Signature: _____ Date _____

SE-18-33



City of Tucson PMc
Planning & Development Services
Department -Rezoning Section
201 N. Stone Avenue
P.O. BOX 27210
Tucson, Arizona 85726-7210